



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

PRIVATE USE OF STREETS.

WITH the growth of cities, the rapid increase of travel on streets and the increasing value of land on business streets especially, the question of private use of public highways is becoming more and more important. Encroachments upon the highways, such as steps, bay-windows, areaways, vaults, etc., which in a small town are scarcely noticed, in a large city are of great value to the parties making such use of the highways and of increasing interference with the public use thereof.

When a public highway has reached a development where it has become a main business street in a big city, it is readily seen that it would be better if no encroachments had been permitted beyond the building line. But in all cities, it has become the custom either impliedly or expressly to permit encroachments, such as steps, areaways, vaults, coal-holes, show-windows, electric signs hanging over the streets, porticoes, marquees and other projections; and, as it is difficult to get rid of them, modern legislation has been directed toward compelling those that make such use of the public highways to pay into the public treasury a reasonable rental for the space occupied.

In the Charter of Baltimore City of 1898, as amended in 1900, such uses of the public highways were put upon practically the same basis as franchises for street railways, pipes, etc., in the bed of a street; and the Board of Estimates of Baltimore was given the power to grant the right to use the streets for such purposes in its discretion "for such an amount of money and upon such terms as the said board may consider right and proper." A similar provision exists in most large cities.

Recently the Board of Estimates of Baltimore attempted to revoke all existing privileges, many of which had been in existence for years, and had been granted either without charge or upon a very small charge, in order to put them on the same basis, in regard to the amount of the charges, with the charges for similar franchises which are being made at the present time. The question whether this could be done arose in the case of City

of *Baltimore v. Nirdlinger*.¹ The opinion of the Court by Chief Judge Boyd, contains a very full discussion of the entire subject and upholds the following principles:

- (1) That no right to use the public highways for private purposes can be acquired by prescription or length of user.
- (2) That such a right can only be acquired by authority of the legislature, either directly or through delegation of power to the city council or city board and action by the council or board.
- (3) That any grant of such privilege, whether by the legislature or city council or board, is always subject to revocation by the proper authorities in the exercise of the police power.
- (4) That such privileges cannot be revoked for the purpose of revising the charges, or of making new charges, unless the power of revocation was reserved in the original grant.
- (5) That in making the charge for such use of the public highway, the city board is not restricted to a charge for regulation or supervision, but is entitled to charge upon the idea of a rental for the use made of the city's street.

The last principle, that the charge is not a tax but is in the nature of a rental, is also stated in *Chesapeake & Potomac Tel. Co. v. State Roads Commission*,² in which are cited *Postal Telegraph Co. v. Baltimore*,³ and *St. Louis v. Western Union Tel. Co.*⁴ In the opinion in the case of *Chesapeake & Potomac Tel. Co. v. State Roads Commission*,⁵ the Court said:

"This view was fully supported by the case of *St. Louis v. Western Union Telegraph Co.*, 148 U. S. 92, in which the legality of a municipal charge for telegraph poles on the streets of St. Louis was sustained. An effort was made in that case to defeat the charge on the ground that the telegraph company's poles were maintained in compliance with the terms of a pre-existing general ordinance, which made no such exaction, and that the company was assessed for taxes on its property by the state and city, and that it had constructed and was operating its lines on the streets of the city in pursuance of authority conferred by the act of Congress of 1866 relating to the use of post roads for

¹ 131 Md. 600, 102 Atl. 1014.

² 132 Md. 194, 103 Atl. 447.

³ 156 U. S. 210.

⁴ 148 U. S. 92.

⁵ *Supra*.

such purposes. These defenses were unavailing. It was held that the charge was not an additional tax upon the property of the telegraph company, but was in the nature of rent which the company could properly be required to pay for appropriating 'to its own and sole use a part of the streets and public places of the city.' "

The benefit to those having special uses of the streets is a justification for requiring payment for such uses. An electric sign hung out over a street has an advertising value proportionate to the number of persons who travel the street. So a vault under the street or a store front extending into the street adds so many additional square feet to that floor of the store. That additional space could not be obtained from any other private owner without paying therefor, and should not be obtained from the public without adequate payment therefor.

The contention is frequently made that the enjoyment of a minor privilege in the public highway, such as show windows, areas, vaults, electric signs, etc., adds a value to the property; that the assessors when making their valuation assess at the market value, and that in that market value there is some value derived from the enjoyment of the minor privilege, and that, therefore, indirectly, the owner of the property enjoying the minor privilege pays taxes on the minor privilege.

If an assessment is raised after a building with a bay-window or other projection is constructed, how far, if at all, the value of the minor privilege enters into the total value for which the property is assessed is highly speculative. But granting, for the sake of the argument, that in the latter case the owner of the property does pay taxes upon the added value which is given to his property by reason of the enjoyment of the minor privilege, that is no reason why he should not pay for the minor privilege itself. For every other item that enters into the total valuation and assessment of his property he pays. He pays taxes on the land itself, but he also pays for the land; he pays on the value of his improvements, but he also pays the cost of putting up those improvements; every kind of property upon which a man pays taxes, if derived from some other person, is paid for, and there is no reason why a man should get valuable property from the

public for nothing, simply because he says that "I am going to pay taxes on it after I get it."

The firm maintenance of the principle of charging for such uses of the street will result, as the city grows larger, in a very large revenue, the effect of which will be to lessen the tax rate on the general tax payer. An illustration of the amount of revenue which may be obtained from proper charges for such uses of the public highway is furnished by the use of kiosks on the pavements. These little one story frame structures are octagon shape, the greatest width being about five feet; they occupy less than 20 square feet of the pavement, and yet persons voluntarily pay for the privilege of occupying and using one of these kiosks for selling newspapers, periodicals, etc., as much as \$50.00 per month in the city of Baltimore.

The right to charge for such uses of the public highway, which has been common in recent years in the large cities, has been upheld by the Maryland Court of Appeals in reference to the improved State roads, although the Court held that the State had not delegated to the State Roads Commission the power to make a charge for such use.⁶

With the growth of the demand for improvements and facilities in cities, it is very important that the city should collect all legitimate revenue from franchises and privileges in the public highways, as well as from benefits to adjacent or nearby property caused by the opening and improvement of public highways, in order that the expense of the improvements which the public demand may not fall too heavily upon the general tax payer.

S. S. Field.

BALTIMORE, MD.

⁶ Chesapeake & Potomac Tel. Co. v. State Roads Commission, *supra*.